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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

MORTGAGES LTD.,

Debtor.

Voluntary Chapter 11

Case No. 2-08-bk-07465-RJH

**RESPONSE TO ML MANAGER'S
MOTION TO SELL REAL PROPERTY
FREE AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS**

Real Property located in Pinal County, AZ
known as All States Associates of Pinal IX

Hearing Date: May 18, 2010

Hearing Time: 2:30 p.m.

In response to the invitation of ML Manager, LLC ("ML Manager") as set forth in ML Manager's "*Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances, and Interests*" (the "**Motion**") at page 3 lines 17-18 ("ML Manager will notice the 7 Pass-Through Investors of this Motion and the sale hearing so they can have an opportunity to be heard"), the Oxford Investors¹ hereby submit their response

¹ The "Oxford Investors" are comprised of the following 6 of the "7 Pass-Through Investors" referred to in the Motion and as more specifically set forth in Exhibit A to the Declaration of Ronald Meyer accompanying this Response. All of the Oxford Investors made their investments in the All State Associates of Pinal IX Loan now at issue ("ASA Loan") through their investment advisory firm Oxford Investment Partners, LLC. None of the Oxford Investors have transferred their interests in the ASA Loan to the ASA IX Loan LLC and thus each is what has been variously referenced in these or other proceedings as, e.g., "pass-through" or "opt-out" or "non-transferring fractional interest holder investors" or "NTI's" and may be referred to as such in this Response.

1 (“**Response**”) to that Motion. For the reasons set forth hereinafter, the Oxford Investors
2 object to the proposed sale of any sale of the fractional interests owned and held by the
3 Oxford Investors in the approximate 1,676.57 acres (“**ASA Property**”) described in the
4 Motion. The fractional interests directly owned by the Oxford Investors in the ASA
5 Property may hereinafter be referred to as the “**Oxford ASA Interest**”.

6
7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. Preliminary Facts**

9 While ML Manager had as early as February 4, 2010 indicated that ML Manager
10 was “currently marketing” the ASA Property (see ML MANAGER LOAN PORTFOLIO
11 NEWSLETTER #7 dated Feb. 4, 2010, page 3), the first indication the Oxford Investors
12 received that the ASA Property, including the Oxford ASA Interest, was to be sold (at
13 37% of the value of the original investment) was when the Motion was received in early
14 May, 2010. Before that time the Oxford Investors received no substantive information
15 about the sale or the underlying ASA Property, including information regarding the most
16 basic considerations, such as (i) value of property, (ii) marketing process or competitive
17 bids, (iii) term sheets or information about the buyer’s qualifications, (iv) indications as to
18 why this property was being selected for sale (or the methodology if any for determination
19 of which REO should be sold) given the ASA Property is raw and apparently untitled land
20 with minimal carrying costs and may in fact be currently generating revenue, (v)
21 indication of market trends or conditions or other variables which might reasonably be
22 relevant to a determination not only of current reasonable value but anticipated reasonable
23 value if the ASA Property was held, or even (vi) what the brokerage commission might
24 be. The Oxford Investors had no indication that ML Manager was negotiating a 27-page
25 purchase and sale agreement that would be ready for signatures just a week after the
26 Trustee’s Deed recorded. In short, the Oxford’s Investors had no previous opportunity to

1 evaluate information in order to determine whether to object to the proposed sale or not.

2 On Friday May 7, 2010, Oxford Investors through their authorized representative
3 sent an e-mail ("**Information Request**") to counsel for ML Manager indicating
4 appreciation for being noticed on the Motion and being provided with "an opportunity to
5 be heard" (as proposed in the Motion at page at page 3, line 18) and also indicating an
6 interest in intelligently exercising the Oxford Investors' election to object or approve of
7 the proposed sale. In this regard the e-mail stated that "In order for the Oxford Investors
8 to benefit from an intelligent exercise of the opportunity to come to an informed
9 conclusion about the proposed sale, there is a need for the reasonable and customary
10 information that any seller would require to assess the terms of sale". The e-mail notes
11 that given the fact that ML Manager has "advised the court that it believes the sale is in
12 the best interest of the investors in the loan" (see Motion at page 2, lines 23-24), it was
13 reasonable to assume that "the information upon which it [ML Manager] came to that
14 conclusion is readily available". After discussion between counsel for Oxford Investors
15 and counsel for ML Manager, on Tuesday, May 11, certain information was provided by
16 ML Manager to the counsel for the Oxford Investors (the "**Sale Information**") and
17 counsel agreed to continue the response date to and including Thursday, May 13, 2010.

18 **II. The Sale Information Provided by ML Manager is Insufficient to**
19 **Permit any Reasonable Assessment by the Oxford Investors as to the Wisdom of**
20 **Selling the Oxford ASA Interest and therefore the Oxford Investors Have No**
21 **Alternative but to Object to the Sale.**

22 In the Information Request, Oxford Investors set forth the kinds of information
23 presumed to have been a part of the due diligence file of ML Manager which file, one
24 must assume, provided the basis of ML Manager's belief that "this sale is in the best
25 interest of the investors in the loan and is a valid exercise of its business judgment."
26 (Motion at page 2, lines 23-24). The kinds of information set forth by the Oxford
Investors as presumptively a part of that file were as follows (see Exhibit B to the

1 Declaration of John Rosenfeld attached):

- 2 (i) Any appraisals, or updates to prior appraisals, for the property;
- 3 (ii) Market analyses, comparable sales data, data regarding pending sales and comparable
properties for sale, etc.;
- 4 (iii) ML Manager's due diligence regarding the potential buyer;
- 5 (iv) Information about the marketing effort used to obtain the highest and best offer on the
property, including but not limited to competitive offers to purchase the property ML
6 Manager may have received;
- 7 (v) Information about property tax liability or other property obligations that may diminish
the sales price of the property;
- 8 (vi) Any information ML Manager learned about the condition of the property or the site
vicinity that may affect its value or development potential; and
- 9 (vii) Any other information that a reasonable seller would need to evaluate a purchase offer
in this market.

10 All of the information requested in the Information Request would of course be
11 relevant to an assessment of all considerations that would reasonably be of interest to a
12 potential seller of real property. But instead of such information, ML Manager provided
the Sale Information which was comprised of²:

- 13 (i) several offer term sheets received by the broker on behalf of ML Manager,
- 14 (ii) several offer term sheets received by the broker on behalf of ML Manager from
the buyer entity now a party to the proposed Sales Agreement,
- 15 (iii) an opinion dated September 11, 2009 relating to the value of the ASA
16 Property, and
- 17 (iv) a list of persons/entities who received marketing information regarding the
18 ASA Property.

19 The Sale Information is wholly inadequate to permit a reasonably informed
20 determination as to whether to approve or object to the sale.³ As to the most obvious

21 _____
22 ² Oxford Investors presume that all information in the custody of ML Manager or which ML Manager utilized in
23 recommending the sale was included in the Sale Information.

24 ³ The Oxford Investors wish to be judicious in any discussion of the specific information provided by ML Manager
25 so as to not make public by any such discussion information that is best shared only among sellers. To that end the
26 Oxford Investors may not disclose in this Response certain information from the Sale Information even if supportive
of the position asserted herein by the Oxford Investors. The Oxford Investors will have available at the hearing of
this Motion the Sale Information disclosed by ML Manager for whatever consideration the Court may feel such
information should be accorded in the resolution of this Motion.

1 inquiry, value, the provider of the "opinion" is candid and quick to indicate that (i) its
2 work product is "an opinion and should not be interpreted or relied upon as an appraisal",
3 (ii) "the overall real estate market is in turmoil . . .", (iii) each of the five "pieces"
4 comprising the ASA Property has something different to offer . . .", (iii) the opinion was
5 based in part on "sales dating back to January of 2008" and finally concedes that as
6 concerns the "ranges" of value set forth in the opinion, and at least as of September, 2009,
7 "there is very little empirical data to support the above mentioned ranges . . .". In the face
8 of these qualifications on the opinion and the date of the opinion (September 2009) and in
9 light of the dynamic, real time nature of the state of the commercial property/
10 undeveloped real estate market as it emerges from historic and deep recessionary levels,
11 one would expect a "bring down" of that opinion in the form of a current appraisal.
12 September, 2009 is real estate years away from May, 2010.

13 The Sales Information provided by ML Manager pursuant to the Oxford Investors'
14 request, provides no sense or consideration of the need for the sale or the alternative
15 means of concluding the sale. Was any opportunity given to the investors themselves to
16 consider purchase, could the property better be sold by selling each of its constituent 5
17 "pieces" separately or in some permutation or combination. Would delaying the sale
18 generate a greater return?

19 And assuming such information had been provided and even assuming a
20 determination regarding current fair market was possible from the Sales Information, what
21 are the opportunity costs of such a current sale in an evolving market. In regard to this
22 issue a reasonable seller would want to know what the carrying costs are for the ASA
23 Property (presumed to be near zero given it's entirely undeveloped state) and what if any
24 revenues/rent are being generated (on information and belief, revenues/rents are being
25 generated on the property) or could reasonably be generated by the property to defray any
26 carrying costs or even provide a return to the REO owners.

1 And depending on responses to the foregoing questions, why was this property
2 selected for sale at this time? Is the sale in the best interest of the REO owners of the
3 ASA Property or rather are the ASA Loan investors' (both NTI and TI) interests being
4 sacrificed to the purported interests of investors in all loans implicated in this bankruptcy,
5 including non ASA Loan investors, in raising capital from any source and at any expense
6 to avoid a potential default in repayment of exit financing and subsequent foreclosure on
7 all Loan LLC properties? This topic is important for consideration by all sellers given the
8 fact that the loans that first dispose of loan property ("**First Outs**") must pay a
9 disproportionate portion of the sales proceeds towards the exit financing as compared to
10 subsequent loan property sales, and of particular interest to the Oxford Investors since as
11 NTI's their REO ownership is not collateral for the exit financing (and thus would not be
12 materially vulnerable to any exit financing default) and also due to the fact that unlike
13 members of the ASA Loan LLC who will receive some 17% interest on what turns out to
14 be the excess payment made to the exit financing as a result of being a First Out, the
15 Oxford Investors will receive no such return. Thus this information would be relevant to
16 the Oxford Investors in a manor different from the ASA IX Loan LLC (the "**Loan LLC**")
17 members who ML Manager purports to represent, and makes independent consideration
18 of such information even more important to the unique interests of the Oxford Investors.

19 Finally there is the issue of determining what the net to sellers is likely to be.
20 Suggesting, as the Motion does, that that issue is not now for resolution is not a
21 satisfactory approach to being responsive to an owner's interest in determining what the
22 owner is going to get for his/her property. While explicit detail may not be available, such
23 information as is generally or approximately known and/or the methodology for
24 determining allocable shares from the proceeds should be set forth. In this regard, even
25 facts such as the likely costs of sale or commission rate to be paid to the broker have not
26 been made available.

1 One might reasonably have thought that ML Manager itself would have anticipated
2 the legitimate need for the kinds of information which the Oxford Investors were
3 compelled to request, and that ML Manager would have been more circumspect in its
4 analysis and due diligence (to the extent the disclosures in the Sale Information represent
5 the material information ML Manager had at its disposal) and more forthcoming with
6 information addressing the multitude of issues that could reasonably have been expected
7 to arise both among and between the various REO owners. For these reasons, the Oxford
8 Investors had not yet undertaken to develop its own due diligence file regarding any
9 prospective sale of the ASA Property (but is now undertaking to do just that). ML
10 Manager volunteered only the Sales Agreement for consideration by investors. And only
11 after inquiry has ML Manager provided the limited Sales Information. On the basis of the
12 Sales Information provided,⁴ the Oxford Investors do not have information necessary to
13 allow an informed determination as to whether to object or approve of the proposed sale.⁵

14 **III. Summary**

15 There are 8 co-owners of the REO ASA Property, 6 are Oxford Investors and the
16 Loan LLC is one of the remaining two. Oxford Investors are interested in fully
17 understanding the merits/demerits of the proposed sale of the Oxford ASA Interest. To
18 that end the Oxford Investors are prepared to constructively, cooperatively and promptly
19 engage with the Loan LLC in undertaking a fair consideration of the proposed transaction
20 upon receipt of relevant information.

21 _____
22 ⁴ Oxford Investors, through their representative Oxford Investment Partners, LLC, are now initiating efforts to inform
23 themselves of any reasonably available information necessary for making an informed choice regarding sale.

24 ⁵ The Oxford Investors have not undertaken here to address various other substantive issues ("Other Issues") which
25 would be material and relevant to consideration of the propriety of the issuance of any order of the Court of the kind
26 sought by ML Manager in the Motion. This because resolution of the threshold issue of whether the Oxford
Investors have any objection to the sale may well render academic and unnecessary consideration of such Other
Issues. Nothing in this Response should be seen as (i) waiving or prejudicing the rights of the Oxford Investors to
assert any objection to any course of conduct of ML Manager following a reasonable opportunity for the Oxford
Investors to receive and consider the information sought herein, or (ii) as agreement with any factual or legal
contentions of ML Manager as set forth in the Motion.

1 The current lack of sufficient information upon which to assess the potential sale of
2 the Oxford ASA Interest leaves the Oxford Investors with no alternative but to object to
3 that sale. To facilitate addressing the threshold issue of being provided with necessary
4 information, and with an interest in promptly assessing such information, the Oxford
5 Investors request that the Court put this matter over for such reasonable period of time as
6 may be necessary to allow receipt and fair consideration of such information.⁶

7 The Oxford Investors reserve the right to supplement this Response prior to and at
8 the hearing as additional issues come to light.

9
10 RESPECTFULLY SUBMITTED this 13th
11 day of May, 2010.

12
13 By /s/ Ronald Meyer (No. 2299)
14 Ronald Meyer
Attorneys for the Oxford Investors

15 COPY of the foregoing emailed
16 this 13th day of May, 2010 to the parties
17 on the electronic Service List and to Cathy
18 Reece (creece@fclaw.com)

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25 ⁶ As this Response goes to press counsel for the Oxford Investors has received from counsel for ML Manager some
26 information supplementing the previous Sale Information. This gesture by counsel confirms the prospects for the
further exchanges of information necessary to concluding on the wisdom of the sale or alternative management of the
ASA Property.

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8 Attorney for the Oxford Investors

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

MORTGAGES LTD.,

Debtor.

Voluntary Chapter 11

Case No. 2-08-bk-07465-RJH

**DECLARATION OF JOHN D.
ROSENFELD IN RESPONSE TO ML
MANAGER'S MOTION TO SELL REAL
PROPERTY FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES,
AND INTERESTS**

Real Property located n Pinal County, AZ
known as All States Associates of Pinal IX

Hearing Date: May 18, 2010
Hearing Time: 2:30 p.m.

The undersigned declares as follows:

1. I am of sound mind, over the age of 18 years, and fully competent to testify to the matters stated herein.
2. I am General Counsel for Oxford Investment Partners LLC the investment advisor and representative of certain investors in the All States Associates of Pinal IX property which is the subject of ML Manager's Motion.
3. I have personal knowledge of the facts set forth herein.
4. Attached as Exhibit A hereto is a true and correct list of the Oxford


1 Investors, each of whom have authorized Oxford Investment Partners LLC to bring this
2 Opposition.

3 5. Attached as Exhibit B hereto is a true and correct copy of the Information
4 Request made by Oxford Investors to ML Manager.

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6 I declare under penalty under the laws of the United States that the foregoing is
7 true and correct to the best of my knowledge, information and belief.

8 Dated this 13th day of May, 2010.

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John D. Rosenfeld

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EXHIBIT B

John Rosenfeld

From: John Rosenfeld
Sent: Friday, May 07, 2010 6:10 PM
To: Cathy L. Reece (creece@fclaw.com)
Cc: Walter Clarke
Subject: Request for information regarding proposed sale of All States Associates of Pinal IX REO
Ms. Reece:

I am general counsel for Oxford Investment Partners, LLC, the investment advisory firm representing various investors ("Oxford Investors") in loans originated by Mortgages Ltd. One of those loans is referred to as the All State Associates of Pinal IX, which became real estate owned by the investors on April 15, 2010.

The Oxford Investors recently learned that ML Manager brought a *Motion to Sell Real Property Free and Clear of Liens, Claims, Encumbrances, and Interests* which is set to be heard before Judge Haines on May 18, 2010. The Motion states that "It is not clear if they [Oxford Investors] will object to this Motion and sale" and notes that the pass through investors will be provided notice of the Motion and proposed sale "so they can have an opportunity to be heard." On behalf of the Oxford Investors, we appreciate ML Manager's acknowledgement of and deference to the Oxford Investor's right to reasonable notice and a reasonable opportunity to be heard regarding the various issues raised by the Motion, including approving or objecting to the proposed sale.

In order for the Oxford Investors to benefit from an intelligent exercise of the opportunity to come to an informed conclusion about the proposed sale, there is a need for the reasonable and customary information that any seller would require to assess the terms of a sale. While Exhibit A to ML Manager's Motion provides the terms of the proposed sale, ML Manager has not yet provided the property owners (at least not these Oxford Investors) or their representatives with information to assess those terms.

Would you please provide at your earliest opportunity any and all information related to due diligence conducted by ML Manager regarding the proposed sale on the terms set forth in Exhibit A to the Motion. Such information would presumptively include:

- (i) Any appraisals, or updates to prior appraisals, for the property;
- (ii) Market analyses, comparable sales data, data regarding pending sales and comparable properties for sale, etc.;
- (iii) ML Manager's due diligence regarding the potential buyer;
- (iv) Information about the marketing effort used to obtain the highest and best offer on the property, including but not limited to competitive offers to purchase the property ML Manager may have received;
- (v) Information about property tax liability or other property obligations that may diminish the sales price of the property;
- (vi) Any information ML Manager learned about the condition of the property or the site vicinity that may affect its value or development potential; and
- (vii) Any other information that a reasonable seller would need to evaluate a purchase offer in this market.

As potential sellers, it is also natural that the Oxford Investors have an interest in knowing in advance with some reasonable certainty their net proceeds from the proposed sale. So we ask that you also include either the methodology or actual calculations/formulas that would allow us to determine what amount ML Manager believes each investor will owe as his/her/its fair share of the expenses for this loan. In making that calculation, please recall that the Oxford Investors did not transfer their interests into the relevant loan LLC and thus are not responsible for expenses associated with the exit financing. Should ML Manager nonetheless seek to allocate a portion of such expenses to the non-transferring investors in this loan, the methodology for and quantification of such amounts would be very material to assessing the net proceeds to each seller.

ML Manager advised the court that it believes the sale is in the best interest of the investors in the loan LLC, so we presume that the information upon which it came to that conclusion is readily available. We ask that ML Manager provide such information to us as early as possible so we can expedite our review. Upon receipt, the information will be promptly analyzed.

Yet it may be unreasonable to expect to complete that analysis in time to respond to ML Manager's motion by what you indicated was a due date of May 11, 2010. Therefore, and assuming we have a prompt and full disclosure of the information we seek, we ask that the investors have until May 14 to review the information provided by ML Manager before a response to the Motion is due.

In the event ML Manager cannot promptly provide the information requested, we would ask that you promptly stipulate to continue the hearing to allow the Oxford Investors a meaningful opportunity to evaluate the proposed sale.

In the interest of clarity, please do not interpret my silence on ML Manager's assertion that it acts as "the agent for 7 Pass-Through Investors" as agreement with those assertions or consent to any actions by ML Manager taken as the purported agent of the Oxford Investors.

I look forward to your cooperation in keeping the REO owners informed about the proposed disposition of the REO. Thank you for your prompt attention to these matters.

John D. Rosenfeld

Oxford Investment Partners LLC
2390 E. Camelback Road
Suite 202
Phoenix, AZ 85016
Direct: 602.296.1895 Fax: 602.381.1026

Buy or sell orders, funds-transfer requests, address changes or any other instructions requiring your signature cannot be accepted by email.

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